

NELSON T. LLUZ AND CATALINO C. ALDEOSA, PETITIONERS, VS. COMMISSION ON ELECTIONS AND CAESAR O. VICENCIO, RESPONDENTS.

G.R. No. 172840. June 07, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for certiorari^[1] seeks to annul the Resolutions of the Commission on Elections (COMELEC) En Banc dated 1 February 2006 and 25 May 2006 in E.O. Case No. 04-5. The 1 February 2006 resolution ruled that no probable cause exists to charge private respondent Caesar O. Vicencio with violation of Section 262 in relation to Section 74 of Batas Pambansa Blg. 881 (B.P. 881), otherwise known as the Omnibus Election Code. The 25 May 2006 resolution denied petitioners Nelson T. Lluz and Catalino C. Aldeosa's motion for reconsideration of the 1 February 2006 resolution.

The Facts

Private respondent was a candidate for the post of punong barangay of Barangay 2, Poblacion, Catubig, Samar in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan Elections. In his certificate of candidacy, private respondent stated his profession or occupation as a certified public accountant (CPA). Private respondent won in the elections.

Sometime after private respondent's proclamation, petitioners charged him before the Law Department of the COMELEC (Law Department) with violation of Section 262 in relation to Section 74 of B.P. 881. Petitioners claimed they had proof that private respondent misrepresented himself as a CPA. Attached to petitioners' complaint was a Certification signed by Jose Ariola, Director II, Regulations Office of the Professional Regulation Commission (PRC), stating that private respondent's name does not appear in the book of the Board of Accountancy. The book contains the names of those duly authorized to practice accountancy in the Philippines.

In his Answer, private respondent maintained that he was a CPA and alleged that he passed the CPA Board Examinations in 1993 with a rating of 76%. Private respondent argued that he could not be held liable for an election offense because his alleged misrepresentation of profession was not material to his eligibility as a candidate.

On 21 September 2004, the Law Department through its Director Alioden D. Dalaig issued a subpoena requiring the Chief of the PRC's Records Section to appear before it and settle the controversy on whether private respondent was indeed a CPA. On 6 October 2004, PRC Records Section Officer-in-Charge Emma T. Francisco appeared before the Law Department and produced a Certification showing that private respondent had taken the 3 October 1993 CPA Board Examinations and obtained a failing mark of 40.71%.

Nevertheless, the Law Department recommended the dismissal of petitioners' complaint. Citing the rulings of this

Court in *Romualdez-Marcos v. COMELEC*[2] and *Salcedo II v. COMELEC*,[3] the Law Department held that the misrepresentation in private respondent's certificate of candidacy was not material to his eligibility as a candidate and could not be a ground for his prosecution.

However, upon motion of petitioners, the COMELEC En Banc by Resolution dated 5 October 2005 ordered the Law Department to file an information against private respondent for violation of Section 262 in relation to Section 74 of B.P. 881. In reversing the resolution of the Law Department, the COMELEC En Banc ruled that *Romualdez-Marcos* and *Salcedo* were disqualification cases not applicable to the case of private respondent who is sought to be prosecuted for an election offense. As such, the misrepresentation made by private respondent need not be material to his eligibility as a candidate in order to hold him liable under Section 262. The COMELEC En Banc further ruled that election offenses are *mala prohibita*, in which case no proof of criminal intent is required and good faith, ignorance, or lack of malice are not valid defenses.

On 18 October 2005, private respondent moved for reconsideration.

The Ruling of the COMELEC

On 1 February 2006, the COMELEC En Banc reconsidered its earlier Resolution, explaining thus:

After a careful evaluation x x x [w]e rule to grant the motion for reconsideration.

Criminal intent is not absolutely disregarded in election offense cases. A good example is the provision of Section 261(y)(17) of [B.P. 881], which requires malicious intent in order that a person may be charged for omitting, tampering, or transferring to another list the name of a registered voter from the official list of voters posted outside the polling place.

In relation thereto, the fact that an offense is *malum prohibitum* does not exempt the same from the coverage of the general principles of criminal law. In this case, the provisions of Section 261 of [B.P. 881] must not be taken independent of the concepts and theories of criminal law.

The offense allegedly committed by the respondent is for failure to disclose his true occupation as required under Section 74 of [B.P. 881]. Apparently, respondent misrepresented himself as a CPA when in fact he is not. The misrepresentation having been established, the next issue posited by the parties is whether or not the misrepresentation should be material before it can be considered as an election offense.

We answer in the affirmative. Violation of Section 74 is a species of perjury, which is the act of knowingly making untruthful statements under oath. Settled is the rule that for perjury to be committed, it must be made with regard to a material matter.

Clearly, the principle of materiality remains to be a crucial test in determining whether a person can be charged with violating Section 74 of [B.P. 881] in relation to Section 262 thereof.

The case of [*Salcedo*] sheds light as to what matters are deemed material with respect to the certificate of candidacy, to wit: citizenship, residency and other qualifications that may be imposed. The nature of a candidate's occupation is definitely not a material matter. To be sure, we do not elect a candidate on the basis of his occupation.[4]

Petitioners filed a motion for reconsideration, which the COMELEC En Banc denied in the assailed Resolution dated 25 May 2006. The COMELEC declared that while it "condemn[ed] in the strongest possible terms" private respondent's "morally appalling, devious, calculating, [and] deceitful" act, it could not prosecute private respondent for an election offense, but possibly only for an administrative or criminal offense.

Hence, this petition.

The Issues

Petitioners argue that:

- The assailed resolutions failed to consider that a violation of Section 262 in relation to Section 74 of B.P. 881 is *malum prohibitum*;
- The ruling in *Salcedo* is not applicable to petitioners' complaint, that is, a fact misrepresented in a certificate of candidacy need not be material in order to constitute a violation of Section 262 in relation to Section 74 of B.P. 881; and
- Assuming *arguendo* that materiality of a misrepresentation is required to constitute a violation of Section 262 in relation to Section 74 of B.P. 881, the assailed resolutions should have held material private respondent's misrepresentation because it increased his chances of winning in the elections.

The Ruling of the Court

Petitioners come to us on a single question of law: is an alleged misrepresentation of profession or occupation on a certificate of candidacy punishable as an election offense under Section 262 in relation to Section 74 of B.P. 881?

We rule in the negative.

In urging the Court to order the COMELEC to file the necessary information against private respondent, petitioners invoke Sections 262 and 74 of B.P. 881, which we reproduce below:

Section 262. Other election offenses.—Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240. (Emphasis supplied)

Section 74. Contents of certificate of candidacy.—The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case [of] a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires. (Emphasis supplied)

The penal coverage of Section 262 is limited.

From a cursory reading of Sections 262 and 74 of B.P. 881, one may possibly conclude that an act or omission in violation of any of the provisions of Section 74 ipso facto constitutes an election offense. Indeed, petitioners point out that private respondent's misrepresentation of profession having been proved before the COMELEC, the latter is compelled to prosecute him for violation of Section 262. Petitioners argue that such a violation being an election offense, it is *malum prohibitum* and immediately gives rise to criminal liability upon proof of commission.

Petitioners' stance assumes that Section 262 penalizes without qualification the violation of the sections it enumerates. This assumption is uncalled for in view of the wording of Section 262.

The listing of sections in Section 262 is introduced by the clause: "Violation of the provisions, or pertinent portions, of the following sections shall constitute election offenses: x x x." The phraseology of this introductory clause alerts us that Section 262 itself possibly limits its coverage to only pertinent portions of Section 74. That such a possibility exists must not be taken lightly for two reasons. First, were the phrase not necessary, the law's framers would have instead directly declared that violation of "the provisions" or "any provision" of the enumerated sections – without any qualification – would constitute an election offense. It is a settled principle in statutory construction that whenever possible, a legal provision, phrase, or word must not be so construed as to be meaningless and a useless surplusage in the sense of adding nothing to the law or having no effect on it.^[5] Second, equally well-settled is the rule that a statute imposing criminal liability should be construed narrowly in its coverage such that only those offenses clearly included, beyond reasonable doubt, will be considered within the operation of the statute.^[6] A return to Section 74 is thus imperative.

Section 74 enumerates all information which a person running for public office must supply the COMELEC in a sworn certificate of candidacy. Section 74 specifies that a certificate of candidacy shall contain, among others, a statement that the person is announcing his or her candidacy for the office and is eligible for such office, the unit of government which the person seeks to represent, his or her political party, civil status, date of birth, residence, and profession or occupation. Section 74 further requires that the person make several declarations: "that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance" to it, "that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities," "that he is not a permanent resident or immigrant to a foreign country," "that the obligation imposed by his oath is assumed voluntarily," and "that the facts stated in the certificate of candidacy are true to the best of his knowledge."

Section 74 does not expressly mention which portion in its provisions is pertinent to Section 262, or which among its provisions when violated is punishable as an election offense. Nothing in Section 74 partakes unmistakably of a penal clause or a positive prohibition comparable to those found in other sections^[7] also mentioned in Section 262 that use the words "shall not." The Court is then left to interpret the meaning of Section 74 to determine which of its provisions are penalized under Section 262, and particularly if disclosure of profession or occupation is among such provisions.

Our rulings in *Abella v. Larrazabal* and *Salcedo* clarify the concept of misrepresentation under B.P. 881.

The issue in this case is novel, yet the facts and provisions of law now before us call to mind the cases of *Abella*

v. Larrazabal[8] and Salcedo, perhaps the closest this case has to a relevant precedent.

Abella dwelt on the issue of misrepresentation of residence in a certificate of candidacy. Petitioner Abella had filed a case against private respondent Larrazabal before the COMELEC on the ground that the latter falsely claimed to be a resident of Kananga, Leyte in her certificate of candidacy. In the course of the hearing, Larrazabal moved for clarification of the nature of the proceedings, asking the COMELEC to determine under what law her qualifications were being challenged. The COMELEC, by process of elimination, determined that the proceeding was not (1) intended against a nuisance candidate under Section 69 of B.P. 881, as Larrazabal was obviously a bona fide candidate; (2) a petition for quo warranto under Section 253 which could be filed only after Larrazabal's proclamation, as Larrazabal had not yet been proclaimed; (3) a petition to deny due course to Larrazabal's certificate of candidacy under Section 78, as Abella's petition did not contain such prayer and was not filed in the manner required by the COMELEC Rules of Procedure; or (4) a petition for disqualification under Section 68, as Larrazabal was not being charged with the commission of any election offense mentioned under the section. The COMELEC concluded that "the subject of the petition, to wit, misrepresentation in the certificate of candidacy, was actually a violation of Section 74" and must be prosecuted as an election offense under Section 262. The COMELEC dismissed the petition and referred the case to its Law Department for prosecution.

We held that the dismissal was improper. There we reasoned that the issue of residence having been squarely raised before the COMELEC –

x x x it should not have been shunted aside to the Law Department for a roundabout investigation of [Larrazabal's] qualification through the filing of a criminal prosecution, if found to be warranted, with resultant disqualification of the accused in case of conviction. The COMELEC should have opted for a more direct and speedy process available under the law, considering the vital public interest involved and the necessity of resolving the question at the earliest possible time for the benefit of the inhabitants of Leyte.[9]

By "direct and speedy process," the Court referred to Section 78 of B.P. 881, which states:

Section 78. Petition to deny due course to or cancel a certificate of candidacy.– A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. (Emphasis supplied)

Thus, upon considering the facts and seeing that Larrazabal's misrepresentation of her residence put her qualification as a candidate at issue,[10] the Court found that the case fell squarely within the provisions of Section 78 and directed the COMELEC to determine the residence qualification of Larrazabal. Notably, the Court did not make a finding that Abella had no cause of action under Section 262, but only characterized the criminal case as involving a "roundabout investigation" seeking an end – Larrazabal's disqualification – that could be achieved more speedily through an administrative proceeding under Section 78. The ruling in Abella recognized that Larrazabal's act of misrepresenting her residence, a fact required to be stated in her certificate of candidacy under Section 74 and which was also a qualification for all elective local officials, gave rise to two causes of action against her under B.P. 881: one, a criminal complaint under Section 262; and second, a petition to deny due course to or cancel a certificate of candidacy under Section 78.

The case of Salcedo six years after Abella tested the limits of Section 78 on the specific question of what constitutes a material misrepresentation. In Salcedo, petitioner Victorino Salcedo prayed for the disqualification of private respondent Emelita Salcedo (Emelita) from the mayoralty race in Sara, Iloilo on the basis of the use of her surname. Petitioner alleged that Emelita's marriage to Neptali Salcedo (Neptali) was void and therefore

Emelita's use of Neptali's surname constituted a material misrepresentation. The COMELEC ruled in favor of Emelita, finding that she committed no misrepresentation. On appeal by petitioner, the Court held:

In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to Section 78 x x x.

x x x x

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain[s] to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of [B.P. 881].

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer[s] to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in [the] certificate of candidacy are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. x x[11] (Emphasis supplied)

From these two cases several conclusions follow. First, a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility. Second, when a candidate commits a material misrepresentation, he or she may be proceeded against through a petition to deny due course to or cancel a certificate of candidacy under Section 78, or through criminal prosecution under Section 262 for violation of Section 74. Third, a misrepresentation of a non-material fact, or a non-material misrepresentation, is not a ground to deny due course to or cancel a certificate of candidacy under Section 78. In other words, for a candidate's certificate of candidacy to be denied due course or canceled by the COMELEC, the fact misrepresented must pertain to a qualification for the office sought by the candidate.

Profession or occupation is not a qualification for elective office, and therefore not a material fact in a certificate of candidacy.

No elective office, not even the office of the President of the Republic of the Philippines, requires a certain profession or occupation as a qualification. For local elective offices including that of punong barangay, Republic Act No. 7160 (R.A. 7160) or the Local Government Code of 1991 prescribes only qualifications pertaining to citizenship, registration as a voter, residence, and language. Section 39 of R.A. 7160 states:

Section 39. Qualifications. –

(a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang

panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

x x x x

Profession or occupation not being a qualification for elective office, misrepresentation of such does not constitute a material misrepresentation. Certainly, in a situation where a candidate misrepresents his or her profession or occupation in the certificate of candidacy, the candidate may not be disqualified from running for office under Section 78 as his or her certificate of candidacy cannot be denied due course or canceled on such ground.

In interpreting a law, the Court must avoid an unreasonable or unjust construction.

Were we to follow petitioners' line of thought, for misrepresentation of a non-material fact, private respondent could be prosecuted for an election offense and, if found guilty, penalized with imprisonment and other accessory penalties. B.P. 881 prescribes a uniform penalty for all election offenses under it to cover those defined in Sections 262 and 261, to wit:

Section 264. Penalties. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

The position taken by petitioners merely highlights for us the absurdity of not applying here the reasons given by the Court in *Salcedo*, a mere disqualification case. In the present case, private respondent not only could be disqualified from holding public office and from voting but could also be deprived of his liberty were the COMELEC to pursue a criminal case against him. If in *Salcedo* the Court could not conceive the law to have intended that a person be deprived "of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake" on the certificate of candidacy, weightier considerations here demand that materiality of the misrepresentation also be held an essential element of any violation of Section 74. Otherwise, every detail or piece of information within the four corners of the certificate of candidacy, even that which has no actual bearing upon the candidate's eligibility, could be used as basis for the candidate's criminal prosecution.

Further compelling us to dismiss this petition is the consideration that any complaint against private respondent for perjury under the Revised Penal Code would necessarily have to allege the element of materiality. The pertinent section of the Revised Penal Code states:

Art. 183. False testimony in other cases and perjury in solemn affirmation.— The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provision of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires. (Emphasis supplied)

The basis of the crime of perjury is the willful assertion of a falsehood under oath upon a material matter. Although the term "material matter" under Article 183 takes on a fairly general meaning, that is, it refers to the main fact which is the subject of inquiry,[12] in terms of being an element in the execution of a statement under oath it must be understood as referring to a fact which has an effect on the outcome of the proceeding for which

the statement is being executed.[13] Thus, in the case of a certificate of candidacy, a material matter is a fact relevant to the validity of the certificate and which could serve as basis to grant or deny due course to the certificate in case it is assailed under Section 78. Of course, such material matter would then refer only to the qualifications for elective office required to be stated in the certificate of candidacy.

Perjury under Article 183 of the Revised Penal Code carries the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and translates to imprisonment for four months and one day up to two years and four months. The duration of this imprisonment is a far cry from that meted by Section 264 of B.P. 881, which is a minimum of one year up to a maximum of six years. With the gravity of the punishment provided by B.P. 881 for violation of election offenses, we glean the intention of the law to limit culpability under Section 262 for violation of Section 74 only to a material misrepresentation. We thus adhere to the more reasonable construction of the term "pertinent portions" found in Section 262, in particular reference to Section 74, to mean only those portions of Section 74 which prescribe qualification requirements of a candidate.

WHEREFORE, we DISMISS the petition. We AFFIRM the En Banc Resolutions of the Commission on Elections dated 1 February 2006 and 25 May 2006.

SO ORDERED.

Puno, C.J., on official leave.

Quisumbing, Acting C.J., Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

Carpio Morales, J., on leave.

Nachura, J., no part. Filed pleading as Sol Gen.

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] G.R. No. 119976, 18 September 1995, 248 SCRA 300.

[3] 371 Phil. 377 (1999).

[4] Rollo, pp. 37-38.

[5] AGPALO, STATUTORY CONSTRUCTION 185 (1990), citing *Uytengsu v. Republic*, 95 Phil. 890 (1954), *People v. Gatchalian*, 104 Phil. 664 (1958).

[6] *United States v. Abad Santos*, 36 Phil. 243 (1917).

[7] See Sections 80, 81, 85, 86, 89, 95, 96, 97, and 229 of B.P. 881, among others.

[8] G.R. Nos. 87721-30, 21 December 1989, 180 SCRA 509.

[9] *Id.* at 518.

[10] Section 39 of Republic Act No. 7160, also known as the Local Government Code of 1991, states:

Section 39. Qualifications. –

(a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Emphasis supplied)

[11] Salcedo, *supra* note 3 at 385-390.

[12] *Acuña v. Deputy Ombudsman for Luzon*, G.R. No. 144692, 31 January 2005, 450 SCRA 232.

[13] 60 Am. Jur. 2d Perjury §27, citing *Holbrooks v. Commonwealth of Kentucky*, 85 S.W.3d 563, Ky., 2002, 26 September 2002.

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